

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8368 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KABIR KHUDABUX

Versus

BHARAT VIJAY MILLS

Appearance:

MR DS VASAVADA for Petitioners
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 25/08/2000

ORAL JUDGEMENT

The petitioners have filed the present petition before this court challenging the order of the industrial court dated 7.9.1991 wherein the applications of the petitioners were rejected which were filed under Section 33(c)(2) of the Industrial Disputes Act.

2. In the petition it was stated that the petitioners were working in the Pattern Maker Department of the respondent i.e M/s. Bharat Vijay Mills. The respondent and the Textile Labour Association which is a representative union under the provisions contained in the Bombay Industrial Relations Act, 1946, entered into the agreement stating inter alia that certain posts were to be abolished and those workmen desirous of leaving the job voluntarily were to be paid the gratuity and the retrenchment compensation.

3. It was further stated that the petitioners also opted for retrenchment benefits. The applied for granting retrenchment benefits. The respondent Mill did not pay the retrenchment compensation at the rate prescribed in the statute.

4. Being aggrieved and dissatisfied with the said order the petitioners filed recovery applications before the Labour Court under Section 33(c)(2) of the Industrial Disputes Act. These recovery applications were numbered as Recovery Application Nos. 2426, 1479, 2556 of 1985. All these applications were heard by the Labour Court. The Labour Court has referred to the agreement particularly Clause 22 of the Agreement which provided that in case of dispute or difficulty arising out of agreement that the workmen were paid less retrenchment compensation then the workmen must apply for Textile Labour Association. It was stated that the petitioners had not approached the Textile Labour Association complaining that they have not been paid adequate retrenchment compensation. In view of the same, the Labour Court observed that the workmen have committed breach of clause 22 of the Agreement and therefore the present application is not maintainable before the Labour Court.

5. Mr. Vasavada learned advocate for the petitioners has tried to assail the order of the Labour Court on various grounds that as per the provisions of the law regarding retrenchment compensation the Industrial Court has jurisdiction to decide the same. He has stated that retrenchment is pre-existing right and the agreement cannot take away the jurisdiction which is conferred under the statute and the petitioners are entitled to receive retrenchment at the rate of 15 days for every completed years of service. According to him under the provisions of the Industrial Disputes Act, the Court has jurisdiction to grant the application.

6. In my view in view of the judgement of the Hon'ble Supreme Court in the case of MOHD. YUNUS VS. MOHD. MUSTAQIM AND OTHERS reported in AIR 1984 SC 38 where the Hon'ble Supreme Court has observed in para 7 as under:-

"In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

7. The aforesaid judgement has been followed by this court in the case of C.R. KUKVAVA VS. G.M. WESTERN RAILWAY reported in 1998(1) G.L.H. 461 (Coram: K.G. Balakrishnan, as he then was and J.M. Panchal, JJ) in which at para 7 it is observed as follows:-

"Para 7 - An order passed by the Tribunal can be challenged under Articles 226/227 of the Constitution of India only if there is any jurisdictional error or procedural error apparent on the face of the record. It was observed by the Supreme Court in Mohd. Yunus Vs. Mohd. Mustaqim and Ors. reported in AIR 1984 Supreme Court 38 that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution of India is limited to seeing that an inferior Court or Tribunal function within the limits of its authority and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision."

8. In view of the above decisions, I do not find any jurisdictional error in the order of the Tribunal and therefore I reject this petition, accordingly. Rule is discharged with no order as to costs.

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